

IN THE SENATE

SENATE BILL NO. 1322

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO BEER; AMENDING SECTION 23-1001, IDAHO CODE, TO REVISE A DEFINITION; AND AMENDING SECTION 23-1033, IDAHO CODE, TO REVISE PROVISIONS REGARDING AN EXCEPTION RELATING TO CERTAIN FINANCIAL INTEREST OR OWNERSHIP OR CONTROL OF CERTAIN REAL PROPERTY AND TO MAKE TECHNICAL CORRECTIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 23-1001, Idaho Code, be, and the same is hereby amended to read as follows:

23-1001. DEFINITIONS. As used in this chapter:

(a) The word "beer" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt and/or other ingredients in drinkable water.

(b) The word "brewer" means a person licensed to manufacture beer at a premises or establishment in the state of Idaho.

(c) "Certificate of approval" means a license issued to a person whose business is located outside of the state of Idaho, who sells beer to wholesalers or brewers located within the state of Idaho.

(d) The term "dealer" means a person licensed to import beer into this state for sale to a wholesaler.

(e) The word "director" means the director of the Idaho state police.

(f) The words "live performance" mean a performance occurring in a theater and not otherwise in violation of any provision of Idaho law.

(g) The word "person" includes any individual, firm, copartnership, association, corporation or any group or combination acting as a unit, and the plural as well as the singular number unless the intent to give a more limited meaning is disclosed by the context.

(h) The word "premises" means the building and contiguous property owned, or leased or used under government permit by a licensee as part of the business establishment in the business of sale of beer at retail, which property is improved to include decks, docks, boardwalks, lawns, gardens, golf courses, ski resorts, courtyards, patios, poolside areas or similar improved appurtenances in which the sale of beer at retail is authorized under the provisions of law.

(i) The word "retailer" means a person licensed to sell beer to consumers at premises described in the license.

(j) The word "theater" means a room, place or outside structure for performances or readings of dramatic literature, plays or dramatic representations of an art form not in violation of any provision of Idaho law.

(k) The word "wholesaler" means any person licensed to sell beer to retailers, wholesalers, permittees or consumers and distribute beer from warehouse premises described in the license.

(1) All other words and phrases used in this chapter, the definitions of which are not herein given, shall be given their ordinary and commonly understood and acceptable meanings.

SECTION 2. That Section 23-1033, Idaho Code, be, and the same is hereby amended to read as follows:

23-1033. FINANCIAL INTEREST IN OR AID TO RETAILERS PROHIBITED -- CERTAIN AID PERMITTED. (1) Except as provided in sections 23-1003(d), and 23-1003(e), Idaho Code, it shall be unlawful for any brewer, dealer, wholesaler, or the holder of any certificate of approval, directly or indirectly, or through an affiliate, subsidiary, officer, director, agent or employee:

(a) To have any financial interest in any licensed retailer's business, or to own or control any real property upon which a licensed retailer conducts his business, except such that this subsection (1) (a) shall not apply to any brewer, as defined in section 23-1001, Idaho Code, or to property as shall have that has been so owned or controlled continuously for more than one (1) year prior to July 1, 1975; or

(b) To aid or assist any licensed retailer by giving such retailer, or any employee thereof, any discounts, premiums or rebates in connection with any sale of beer; or

(c) To aid or assist any licensed retailer by furnishing, giving, renting, lending or selling any equipment, signs, supplies, services, or other thing of value to the retailer which may be used in conducting the retailer's retail beer business, except as expressly permitted by this chapter; or

(d) To enter into any lease or other agreement with any retail licensee to control the product or products sold by such retailer; or

(e) To provide for any rental or other charge to be paid to or by the retailer for product display or advertising display space.

(2) A brewer, dealer, or wholesaler as an incident to merchandising in the ordinary course of business, and if available to all licensed retailers without discrimination, may sell to a retailer equipment, supplies, or clothing which may be used in conducting the retailer's retail business. A brewer, dealer or wholesaler may not sell such equipment or supplies at a price, or under terms, intended or designed to encourage or induce the retailer to use products of the seller to the exclusion of the products of other brewers, dealers or wholesalers. In no event shall the sales price be less than the reasonable value of such equipment or supplies.

(3) Notwithstanding the provisions of subsection (2) of this section, a brewer, dealer, or wholesaler, as an incident to merchandising in the ordinary course of business, and if available to all retailers within the brewer, dealer or wholesaler's service area, without discrimination, may lend, give, furnish or sell to a retailer, the following items:

(a) Necessary accessory equipment, such as shaft blowers, tapping devices, valves, beer hoses, washers, couplings, clamps, air hoses, vents, faucets, CO gas regulators, picnic or party pumps, together with necessary nonmechanical or nonenergized equipment to enable cooling of beer, and CO gas or ice when the same is furnished at the current retail price and as a bona fide sale in the regular course of business;

1 (b) Signs, posters, placards, designs, devices, decorations or graphic  
2 displays bearing advertising matter and for use in windows or elsewhere  
3 in the interior of a retail establishment. The brewer, dealer or whole-  
4 saler shall not directly or indirectly pay or credit the retailer for  
5 displaying such materials or for any expense incidental to their opera-  
6 tion;

7 (c) Newspaper cuts, mats or engraved blocks for use in retailer's ad-  
8 vertisements;

9 (d) Items such as sports schedules, posters, calendars, informational  
10 pamphlets, decals and other similar materials for display at the point  
11 of sale which bear brand advertising for beer prominently displayed  
12 thereon, and which items are intended for use by the retailer's cus-  
13 tomers off the licensed premises and which items are made available to  
14 the retailer's customers for such purpose;

15 (e) Temporary signs or banners displaying a brewer's, dealer's or  
16 wholesaler's name, trademark or label, which signs may be permitted  
17 to be temporarily displayed on the exterior portion of the retailer  
18 premises in connection with a special event, in accordance with such  
19 rules relating thereto as may be established by the director.

20 (4) A distributor may perform services incident to or in connection  
21 with the following:

22 (a) The stocking, rotation and restocking of beer sold and delivered  
23 to such licensed retailer on or in such licensed retailer's storeroom,  
24 salesroom shelves or refrigerating units, including the marking or  
25 ~~re-marking~~ re-marking of containers of such beer to indicate the selling  
26 price as established by the retailer and to the arranging, rearranging,  
27 or relocating of advertising displays referred to in this section. For  
28 the purposes of this paragraph, a wholesaler may, with the permission  
29 of the retailer, and in accordance with space allocations directed by  
30 the retailer, set, remove, replace, reset or relocate all beer upon the  
31 shelves of the retailer. Labor performed or schematics prepared by the  
32 wholesaler relating to conduct authorized pursuant to this paragraph  
33 shall not constitute prohibited conduct or unlawful aid to a retailer;

34 (b) (i) The inspection of a licensed retailer's draught equipment to  
35 insure sanitation and quality control;

36 (ii) The instruction of licensed retailers in the proper use,  
37 maintenance and care of draught equipment, glasses and products  
38 used in the sale and dispensing of beer and the preparation and  
39 distribution of written information or instructions to licensed  
40 retailers with respect thereto;

41 (iii) The tapping of kegs;

42 (iv) A wholesaler may perform such services as may be required to  
43 maintain sanitation or quality control and which are incident to  
44 the repair and cleaning of a retailer's draught beer equipment and  
45 may furnish or sell the necessary equipment and repair parts and  
46 cleaning supplies required in the performance of such services.

47 (5) A wholesaler may assist a retailer by temporarily providing stor-  
48 age of the retailer's beer for a period not in excess of seven (7) days in  
49 the event that such storage is necessary to maintain the quality of such beer

1 during a temporary loss or failure of the retailer's refrigeration equip-  
2 ment.

3 (6) A brewery, dealer or wholesaler may furnish or give to a retailer  
4 authorized to sell beer for consumption on the licensed premises, for sam-  
5 pling purposes only, a container of beer containing not more than sixty-four  
6 (64) ounces, not currently being sold by the retailer, and which container is  
7 clearly marked "NOT FOR SALE--FOR SAMPLING PURPOSES ONLY."

8 (7) The words "ale" or "malt liquor" may be substituted for "beer" on  
9 any sign used in connection with any advertising herein permitted, provided  
10 reference shall be to ale or malt liquor which has an alcoholic content not  
11 greater than the limitation prescribed in section 23-1002, Idaho Code.

12 (8) Every violation of the provisions of this section by a dealer,  
13 brewer or wholesaler, in which a licensed retailer shall have actively  
14 participated shall constitute a violation on the part of such licensed re-  
15 tailer.